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Attorney for Client Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

GARY VICTOR DUBIN, doing business as the Dubin Law Offices; individually and on behalf of all Hawaii attorneys similarly situated,) Case No. 1:21-cv-00175-JAO-KLM
Attorney Plaintiff,)
and) PLAINTIFFS' JOINT SUBMISSION
) OF LOCAL RULE 7.6 SECOND
) ADDITIONAL SUPPLEMENTAL
) AUTHORITY FOR THE AUGUST 18,
) 2021 HEARING; EXHIBIT "D";
) CERTIFICATE OF SERVICE
)
CHRISTIE ADAMS; TORU AKEHI;)
GWEN ALEJO-HERRING; GLORIA)
ALMENDARES; JERIS YUKIO) (CAPTION CONTINUED ON NEXT PAGE)

AMAZAKI; DEBRA ANAGARAN;)
DIRK APAO; MARGARET APAO;)
JERRY BADUA; JULIA BADUA;)
LIAO LUCY BAMBOO; MIA BAN;)
ROMAN BAPTISTE; CHARLES)
BASS; LAURIE BASS; AGRIPIÑO)
PASCUA BONILLA; RUTH ROJAS)
BONILLA; SHERILYN MAY ROJAS)
BONILLA; KANOA ROSS BRISTOL;)
DONNA BROOKS; DAVID R.)
BROWN; REYNALDO CABUDOL;)
CHRISTY CARRICO; PHINEAS)
CASADY; JOYCE CHANDLER;)
WILLIAM CHANDLER; JENNIFER)
CHAPMAN; LUIS C. CHAVEZ;)
STEPHEN CHEIKES; MERVIN)
HALFRED NAEA CHING; LUCIA)
CHING; SUTAH CHIRAYUNON;)
SEUNG CHOI; BRETT)
CHRISTIANSEN; AH MEI CHUN;)
HUGH JOHN COFLIN; JANET)
COFLIN; RUSSEL COLE; PAUL)
COLLINS; WATOSHNA LYNN)
COMPTON; GEORGE COSTA;)
GREGORY CLYDE SOUZA)
CRAVALHO; TONI NOELANI)
CRAVALHO; ROGER CUNDALL;)
ERIC LEE DAVIES; WILLIAM)
DAVIS; VANDETTA DAVIS;)
YUKIKO HAYASHI DAY; PAIGE DE)
PONTE; FATIMA DUNCAN;)
CAROLINA CABUDOL EALA;)
EDWIN PAET EALA; DAVID)
WENDELL ELLIS; LORI LYNN)
ELLIS; JANICE ELLISON; SCOTT)
ELLISON; NELIE BANIAGA)
ESCALANTE; NORBERTO RAMELB)
ESCALANTE; ELENA FEDOROVA;)
AKIKO FERGERSTROM; JUSTIN)
FERGERSTROM; JOHN J.)

(CAPTION CONTINUED ON NEXT PAGE)

FREEPARTNER III; LISA MARIE)
FREEPARTNER; MICHAEL J.)
FUCHS; IRENE SAJOR GANO;)
ROYD ALLEN GANO; EDNA)
GANTT; PAUL GANTT; LEAH)
GILLESPIE; ROBERT GILLESPIE;)
ELIZABETH GILLETTE; DAVID)
GOODWIN; MALIA GRACE;)
ANTONIO GRAFILO; NELIA)
GRAFILO; HOWARD GREENBERG;)
KENNETH HAGMANN; MICHAEL)
JON HAMMER; DARRYL HASHIDA;)
SEAN HAYWORTH; NICOLE)
FLORES HOSAKA; TOD HOSAKA;)
CHRISTIAN JENSEN; DAVID)
KAPLAN; DONALD KARLEEN;)
BEATA KARPUSIEWICZ;)
JAROSLAW KARPUSIEWICZ;)
YVONNE M. KEAHI; KEITH KIMI;)
OTELIAH KIND; KORY KLEIN;)
MARY KNUDSEN; RALPH)
KNUDSEN; ELEANA U. KOAHOU;)
LENORE LANNON; ROBERT)
LANNON; STEPHEN LAUDIG;)
MALLORY ASPILI LONGBOY;)
SHARI ARAKAWA LONGBOY;)
FRANK JAMES LYON; ERIC)
MADER; AMY KATHLEEN MAHER;)
MICHAEL CHARLES MAHER;)
GWEN MARCANTONIO; MARK)
MARCANTONIO; ARMAND)
MARIBOHO; DARLA MARIBOHO;)
JENNIFER MARTIN; MARYELLEN)
MARKLEY; LAURA MARQUES;)
CHANELLE LEOLA MATTOS;)
JOSEPH KEAOULA MATTOS;)
WILLIAM MCTHEWSON; EMILOU)
N.A. MIKAMI; RICKY R. MIKAMI;)
TROY MIZUKAMI; JONNAVEN JO)
MONALIM; MISTY MARIE)

(CAPTION CONTINUED ON NEXT PAGE)

MONALIM; ROBERT-GAVIN)
MOORE; TERESA MOORE;)
THOMAS MORTON; TERRY LYNNE)
OHARA MOSELEY; YVONNE)
NIELSEN; AILYN OUNYOUNG;)
SAMRIT OUNYOUNG; DAVID L.)
OWLES; LORI Y. OWLES; RAQUEL)
PACHECO; JOHN PERREIRA; ROSE)
PERREIRA; MICHAEL PIERCE;)
MARIO PORTILLO; EBONI)
PRENTICE; ROSARIO RAMOS;)
LURLINE RAPOZA; MERRILYN)
M.J.L. RAPOZA; JOHN RIDDEL, JR.;)
JEANETTE ROSEHILL; MARCUS)
ROSEHILL; RAY J. RUDDY;)
MICHELE COLLEEN RUNDGREN;)
TODD RUNDGREN; JO RUSSO;)
KELLY KALANIKAPULAHĀ'OLE)
SAMPAIO; RICHARD MILIKONA)
SAMPAIO, JR.; JOHN SAVAGE;)
RONALD SCHRANZ; JOHN)
SHIGEMURA; JASON SIEGFRIED;)
MELEANA SMITH; JODY)
SOLBACH; ELIZABETH SPECTOR;)
DANIEL JOSEPH SPENCE; ELAINE)
DAMLOA SPENCE; EILEEN)
EVELYN STEPHENSON; CONNIE)
SWIERSKI; DAVID SWIERSKI;)
BONNIE SWINK; JACK SWINK;)
EVELYN TAKENAKA; NADINE)
TAMAYOSE; REID TAMAYOSE;)
KARRI TESHIMA; CLOVER THEDE;)
DYLAN THEDE; LANA M.)
TOLEAFOA; SAUMANI LOPI)
TOLEAFOA; BRUCE ROBERT)
TRAVIS; ELISE TRAVIS; DARREN)
TSUCHIYA; LANCE TSUCHIYA;)
MALIA OLIVAS TSUCHIYA;)
ANTHONY TUCKER; GLADYS)
TUPULUA; HEDY UDARBE;)

(CAPTION CONTINUED ON NEXT PAGE)

RUSTICO UDARBE; VALERIE)
UYEDA; EDWARD VALLEJO; JON)
VAN CLEAVE, M.D.; PATRICK)
VERHAGEN; STEPHEN WARD;)
DONOVAN WEBB; VALERIE)
WOODS; LERMA YAMASHITA;)
JACK YOUNG; and NANCY PATSY)
YOUNG; individually and on behalf of)
all clients of Hawaii attorneys similarly)
situated,)
Client Plaintiffs,)
vs.)
THE SUPREME COURT OF THE)
STATE OF HAWAII, in its legislative)
rule-making capacity and in its judicial)
capacity; THE HONORABLE MARK)
E. RECKTENWALD, in his official)
capacity while serving as Chief Justice)
of the Supreme Court of the State of)
Hawaii; THE HONORABLE PAULA)
A. NAKAYAMA, in her official)
capacity while serving as Associate)
Justice of the Supreme Court of the)
State of Hawaii; THE HONORABLE)
SABRINA S. MCKENNA, in her)
official capacity while serving as)
Associate Justice of the Supreme Court)
of the State of Hawaii; THE)
HONORABLE MICHAEL D.)
WILSON, in his official capacity while)
serving as Associate Justice of the)
Supreme Court of the State of Hawaii;)
and THE HONORABLE KATHERINE)
S. LEONARD, in her official capacity)
while serving as appointed substitute)
Associate Justice of the Supreme Court)
of the State of Hawaii,)

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)
State Defendants,)
)
and)
)
THE OFFICE OF DISCIPLINARY)
COUNSEL OF THE HAWAII)
SUPREME COURT, in its individual)
capacity as a non-agency Special)
Master; THE DISCIPLINARY BOARD)
OF THE HAWAII SUPREME COURT,)
in its individual capacity as a non-)
agency Special Master; THE)
LAWYERS' FUND FOR CLIENT)
PROTECTION OF THE HAWAII)
SUPREME COURT, in its individual)
capacity as a non-agency Special)
Master; BRADLEY R. TAMM in his)
individual capacity while serving under)
color of law as both the Chief)
Disciplinary Counsel of the Office of)
Disciplinary Counsel of the Hawaii)
Supreme Court and the Fund)
Administrator of the Lawyers' Fund for)
Client Protection of the Hawaii Supreme)
Court; CLIFFORD L. NAKEA in his)
individual capacity while serving under)
color of law as Chairperson of the)
Disciplinary Board of the Hawaii)
Supreme Court; ROY F. HUGHES in)
his individual capacity while serving)
under color of law as a Hearing Officer)
of the Disciplinary Board of the Hawaii)
Supreme Court; CHARLENE M.)
NORRIS in her individual capacity)
while serving under color of law as)
Senior Disciplinary Counsel of the)
Office of Disciplinary Counsel of the)
Hawaii Supreme Court; and ANDREA)
R. SINK, in her individual capacity)

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while serving under color of law as an)
Investigator of the Office of)
Disciplinary Counsel of the Hawaii)
Supreme Court,)
)
)
Civil Rights Defendants)
)
)

**PLAINTIFFS' JOINT SUBMISSION OF LOCAL RULE 7.6
SECOND ADDITIONAL SUPPLEMENTAL AUTHORITY FOR
THE AUGUST 18, 2021 HEARING**

Plaintiffs hereby jointly submit for consideration at the August 18, 2021 hearing before the Honorable Jill Aiko Otake the following second additional recently published supplemental authority:

Zito v. North Carolina Coastal Resources Commission, 2021 WL 3483291 (4th Cir. 2021) (yellow highlighted) (Zito held not only is it the defendant's burden to prove "the defense of sovereign immunity," a defense "enjoyed before the ratification of the Constitution," "except as altered by the plan of the [Constitutional] Convention or certain constitutional guaranties," as for instance being "barred" by the Fourteenth Amendment, thus considered "waived, when violating superior, constitutional guaranties, or "for ultra vires conduct," "depriving plaintiffs of their federal rights," even allowing damages against bad state actors if no state remedy").¹

¹ The published Zito decision, as yet available only on Westlaw, was filed on 8/9/21, nineteen days after filing Plaintiffs' Opposition Memorandum in these proceedings. It is relevant for the 8/18/21 hearing where the state court judgment is not being directly challenged, but are instead the procedures used on due process grounds.

DATED: Honolulu, Hawaii; August 17, 2021.

Respectfully submitted,

/s/ Gary Victor Dubin

GARY VICTOR DUBIN
KEITH K. KIUCHI
Attorneys for Plaintiffs
Submitted Jointly